

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ARELY D. DURAN)	
Claimant)	
)	
VS.)	
)	
BEEF PRODUCTS, INC.)	
Respondent)	Docket Nos. 1,002,809;
)	1,005,650
AND)	
)	
ST. PAUL FIRE & MARINE INS. CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (respondent) appealed the November 5, 2003 Decision entered by Administrative Law Judge (ALJ) Pamela J. Fuller. The Appeals Board (Board) heard oral argument on February 17, 2004.

APPEARANCES

Scott J. Mann of Hutchinson, Kansas, appeared for claimant. Richard J. Liby of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board considered the record and adopts the stipulations listed in the Decision.

ISSUES

This appeal involves two docketed claims that were consolidated for hearing and award purposes. In Docket No. 1,002,809, claimant initially alleged injury to her right hand and wrist occurring "[a]ll days worked until February 14, 2002."¹ In Docket No. 1,005,650, claimant alleged injuries to her left hand and forearm "[a]ll days worked until 05/29/02."² At the regular hearing the parties agreed to consolidate the two claims to allege injuries to claimant's bilateral upper extremities resulting from a series of accidents "through [the] last date worked of May 28, 2002."³

The ALJ awarded claimant permanent partial disability compensation based upon a 46 percent work disability. This percentage of work disability was arrived at by averaging a 28 percent task loss with a 64 percent wage loss. The wage loss was determined after finding claimant had not made a good faith effort to find appropriate employment. A post-injury wage of \$206 per week was imputed as claimant's wage earning ability. The ALJ found claimant was entitled to a general body disability because she suffered injury and impairment to both her right and left upper extremities.

Respondent contends the ALJ erred in finding claimant suffered a permanent work-related injury to her left upper extremity. Respondent contends claimant is only entitled to a scheduled injury award for the right upper extremity.

Claimant's counsel argues claimant's task loss percentage should be increased or, in the alternative, that the ALJ's Award should be affirmed.

The nature and extent of claimant's disability is the only issue for the Board's review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the briefs and oral arguments of the parties, the Board makes the following findings and conclusions:

The ALJ's Decision sets out findings of fact in some detail. As the ALJ's recitation of the testimony is accurate, it is not necessary to repeat all of that information herein. Therefore, the Board will only repeat those facts that are relevant to understand the Board's determination.

¹Form K-WC E-1 Application for Hearing (filed March 15, 2002).

²Form K-WC E-1 Application for Hearing (filed Aug. 16, 2002).

³P.H.Trans. at 5.

Claimant has presented consistent complaints concerning her right upper extremity injury. As to her left upper extremity, however, claimant's complaints have been less consistent and her symptoms have been less clear. The medical records fail to document what claimant alleges is her history of symptoms.

Despite numerous office visits with physicians and physical therapists, there is only one mention of left upper extremity symptoms during the period of 2002 that claimant was working for respondent. Furthermore, even after her termination from respondent's employment, claimant's treating physician, Dr. Philip Mills, does not document any left upper extremity complaints. Moreover, claimant herself failed to show any left upper extremity symptoms in the pain diagram she completed in Dr. Mills' office. In addition, there is a significant dispute among the medical experts as to whether claimant's left upper extremity complaints, even if believed, constitute a rateable condition under the AMA Guides.⁴

The greater weight of the evidence fails to support that claimant's left upper extremity complaints are the result of a work-related injury. Based on this record the Board finds claimant has failed to prove she permanently injured her left upper extremity either as a direct result of her work activities or as a natural consequence of her right upper extremity injuries. Accordingly, her permanent partial disability is limited to her right upper extremity.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Decision of Administrative Law Judge Pamela J. Fuller dated November 5, 2003, is modified as follows:

The claimant is entitled to 3.86 weeks of temporary total disability at the rate of \$332.82 per week in the amount of \$1,283.76 followed by 20.61 weeks of permanent partial disability compensation, at the rate of \$381.88 per week, in the amount of \$7,870.55 for a 10 percent loss of use of the right arm, making a total award of \$9,154.31, all of which is due and owing and is ordered paid in one lump sum less amounts previously paid.

The Board adopts the remaining orders of the ALJ not inconsistent with the above.

IT IS SO ORDERED.

⁴ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*, (4th ed.).

Dated this _____ day of February 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant
Richard J. Liby, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director